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August 4, 2006

The Honorable Joseph J. Farnan, Jr.
United States District Court
844 North King Street
Wilmington, DE 19801

Re: NICE Systems, Inc. and NICE Systems Ltd. v. Witness Systems, Inc.
Civil Action No. 06-311



ATLANTA

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TWIN CITIES

WASHINGTON, DC

Dear Judge Farnan:

I am writing to request that the Rule 16 Scheduling Conference in this action, currently set for Thursday, September 7, 2006, be rescheduled for a later date. We ask for postponement because lead counsel for Witness Systems, Inc., Mr. Setty, and other key members of his litigation team, will be participating on September 7th in a *Markman* hearing in the closely-related action, *Witness Systems, Inc. v. NICE Systems, Inc. and NICE Systems Ltd.*, No. 1:04-CV-2531-CAP (referred to in the motion papers as “*NICE II*”), pending in the Northern District of Georgia.¹ Former Judge McKelvie is acting as a special master in *NICE I* and *II* and, in that capacity, conducted the *Markman* hearing in *NICE I* on July 27th.

We believe it would be efficient and logical to present oral argument on defendant’s pending Motion for Transfer (D.I. No. 13) to the Court at the time of the initial Scheduling Conference. Mr. Setty would like to present that argument since he is intimately familiar with the related Georgia cases that figure prominently in the transfer analysis.

We conferred with opposing counsel regarding a modest postponement of the Scheduling Conference, but they would not agree to join in the request for rescheduling unless defendant agreed to open discovery in spite of the pending Motion for Transfer,² notwithstanding their participation in the same September

¹ As discussed more fully in Defendant Witness Systems, Inc.’s Brief in Support of its Motion for Transfer (D.I. No. 15), three earlier-filed actions, involving the same technologies and products at issue in this action, are currently pending between Witness Systems and NICE Systems in the Northern District of Georgia.

² Defendant maintains that it is inappropriate, under *McDonnell Douglas Corp. v. Polin*, 429 F.2d 30 (3d Cir. 1970), to open discovery in this case before the pending Motion to Transfer is decided. See Defendant’s Letter to the Court filed July 13, 2006 (D.I. No. 21).

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7th *Markman* hearing in *NICE II*. Defendant therefore asks that the Court reschedule the Conference to a later date agreeable to all parties. In that regard, Mr. Setty will be out of the country from September 13-23, but will use his best efforts to make himself available on any other date the Court is able to schedule the Rule 16 Conference.

Respectfully yours,

/s/ William J. Marsden, Jr.

William J. Marsden, Jr.

WJM:jrm

cc: Josy W. Ingersoll, Esq. (via email)